

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.7193 of 2016

and

Crl.M.P.No.3766 and 3767 of 2016

R.Sriramajayam ... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
All Women Police Station,
Tirukovilur, Villupuram District.
(Crime No.32 of 2012)

2.Prabhavathi ... Respondents

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to S.C.No.192 of 2013 pending on the file of the Hon'ble Mahila Court at Villupuram and quash the charge sheet against the petitioner.

For Petitioner : Mr.G.M.Ananthakumar

For Respondents : Mr.C.Emalias
Additional Public Prosecutor (For R1)

ORDER

The petitioner has come forward with this petition to call for the records relating to S.C.No.192 of 2013 pending on the file of the Mahila Court at Villupuram and quash the charge sheet filed against the petitioner.

2.Learned counsel for the petitioner submitted that there is a delay of eight months in preferring the complaint and the same is fatal to the case of the prosecution. For which, he relied upon the decision reported in AIR (SC) 2564 2011 (K.P.Thimmappa Gowda vs. State of Karnataka). He further submitted that FIR is contra to Section 161 Cr.P.C. statement and Section 312 IPC has

been subsequently incorporated. He would also submit that the age of the petitioner is younger than the victim girl and she is an educated girl. He has also relied upon the decision reported in 1999 CrI.L.J.2534 (Abhoy Pradhan vs. State of West Bengal) and submitted that if the accused alleged to have given false promise and had physical affair with consent, then neither the accused committed an offence of rape nor any offence of cheating as defined in Sections 375 and 420 of IPC. Hence, he prayed for quashing the charge sheet filed in S.C.No.192 of 2013.

3.Heard the learned Additional Public Prosecutor appearing for the first respondent. Notice to the second respondent is dispensed with.

4.On the basis of the complaint given by the second respondent, a case in Crime No.32 of 2012 has been registered against the petitioner for the offences punishable under Sections 417, 376, 312 and 506(ii) of IPC. On perusal of the records, it is seen that as soon as the complaint has been given, C.S.R. has been assigned and after enquiry only, case has been registered on 14.07.2012 for the above stated offence. After investigation, charge sheet has been filed against the petitioner. Now the petitioner has come forward with this petition to quash the charge sheet on two grounds.

5.The first ground raised by the learned counsel for the petitioner is that there is a delay of eight months in preferring the complaint and the same is fatal to the case. In the FIR, it was specifically mentioned that the petitioner/accused has given a false promise to marry the second respondent/victim girl in the year 2011 and had physical affair, for the second time he had physical affair on 02.02.2012 and the complaint has been given only on 14.07.2012. Hence the delay is fatal to the case of the prosecution.

6.Now, this Court has to decide whether the delay is fatal? It is appropriate to consider the decision relied upon the petitioner in AIR (SC) 2564 2011 (K.P.Thimmappa Gowda vs. State of Karnataka), wherein it was held as follows:

"Indian Penal Code, 1860 - Section 376 - punishment of rape - appellant raped one Rathnamma aged 18 years - appellant had sex with Rathnamma several times and assured her that he would marry her - Rathnamma became pregnant, but the appellant refused to marry her - trial Court acquitted the appellant, however, the High Court reversed the judgment and convicted the appellant under Section 376 IPC and sentenced him to imprisonment of 7 years and fine - hence, the appeal - Supreme Court held - she had sex

with the appellant on several occasions - delay of over 8 months in lodging the FIR against the appellant - no offence under Section 376 IPC because sex with a woman above 16 years of age with her consent is not rape - impugned judgment of the High Court set aside - appeal allowed."

In the above citation, the Trial Court has acquitted the accused. Against which, appeal has been preferred, where conviction has been given. Against, appeal has been preferred before the Apex Court wherein it was held that the delay has not been properly explained. But herein in the present case, when the second respondent/victim girl had physical affair with the petitioner for the second time, she came to know that she was pregnant and immediately, she intimated the fact. Even though, steps were taken for marriage between the petitioner and the second respondent/victim girl, it was failed. Then only, she gave a complaint. In such circumstances, the delay in preferring the complaint is not fatal to the case of the prosecution. Hence, the above citation is not applicable to the facts of the present case.

7.The next ground raised by the learned counsel for the petitioner is that the provision of Sections 375 and 417 IPC has not been made out. It is true that the de-facto complainant/second respondent is aged about 25 years at the time of occurrence and she is also an educated person. Now, the point to be decided is that whether the second respondent/victim girl has given a consent or free will or coercion or misconception of the fact has to be decided only at the time of trial since it is only a question of fact. Furthermore, in the decision reported in 2013 (1) SCC (Cri) 160 (Gian Singh v. State of Punjab and another), in para-58, the Apex Court held that in respect of serious offences like murder, rape, dacoity or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. But whereas it was specifically mentioned that the proceedings in respect of transaction in the civil flavour having arisen out of civil, mercantile, commercial, financial, partnership, can be quashed, if the matter has been settled between both the parties. So it is appropriate to incorporate para-58 of this judgment, which is extracted hereunder:

"58.Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion,

continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

8. Considering the aforesaid facts and circumstances of the case, whether the ingredients of the offences under Sections 376 and 417 IPC are made out, can be decided only at the time of trial. Furthermore, the case has been registered only in the year 2012, charge sheet has been filed, which was taken as

S.C.No.192 of 2013 i.e after three years. Therefore, the present petition has been filed to quash the charge sheet only with a view to drag on the proceedings. Hence, this petition deserves to be dismissed and it is hereby dismissed.

9.In the result, the Criminal Original Petition is dismissed. Further, since the the matter is of the year 2012, the Presiding Officer, Mahila Court, Villupuram is directed to dispose of the case in S.C.No.192 of 2013 within a period of four months from the date of receipt of a copy of this order after affording fair opportunity to both the parties. Consequently, connected miscellaneous petitions are closed.

cse

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Inspector of Police,
All Women Police Station,
Tirukovilur, Villupuram District.

2.The Presiding Officer,
Mahila Court, Villupuram.

3.The Addl.Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.G.M.Ananthakumar, Advocate Sr 21226

KR/25/4/16

सत्यमेव जयते

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